### IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

## IN AND FOR KENT COUNTY

EARL STRONG, :

C.A. No. K12C-07-005 WLW

Plaintiff, :

:

V.

OFFICER BRENDON DUNNING, : SMYRNA POLICE DEPARTMENT, : and OFFICER WILLIAM DUNCAN, :

:

Defendants.

Submitted: July 11, 2013 Decided: October 4, 2013

#### **ORDER**

Upon Plaintiff's Motion for Reargument. *Denied*.

Earl Strong, pro se

Bruce C. Herron, Esquire of Losco & Marconi, P.A., Wilmington, Delaware; attorney for Defendants.

WITHAM, R.J.

The issue before the Court is whether it should grant Plaintiff's Motion for Reargument pursuant to Superior Court Civil Rule 59(e).

### FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Earl Strong (hereinafter "Plaintiff") has filed the instant Motion for Reargument concerning this Court's June 27, 2013 Order granting the Motion for Summary Judgment filed by Defendants Smyrna Police Department (hereinafter "the Police Department"), Officer Brendon Dunning (hereinafter "Dunning") and Officer William Duncan (hereinafter "Duncan") (collectively "Defendants").

On July 6, 2012 Plaintiff filed a *pro se* complaint with this Court alleging multiple causes of action against the Defendants arising from Plaintiff's arrest for harassment in March of 2012. Plaintiff's arrest arose from an encounter on March 24, 2012 at a Smyrna convenience store with Plaintiff's neighbor, Eric Robinson (hereinafter "Robinson"). Plaintiff and Robinson had a history of previous altercations between them, which had led Plaintiff to obtain a no-contact order against Robinson earlier that month. At the convenience store, Plaintiff allegedly taunted Robinson both inside and outside the store, and photographed Robinson on his phone as Robinson was leaving.

Based on this encounter, Robinson filed a complaint with the Police Department. Dunning investigated the complaint, and interviewed several witnesses who corroborated Robinson's story. Dunning also reviewed the store's video surveillance footage, which supported Robinson's version of events. Based on this evidence, Dunning submitted an application and affidavit of probable cause with the

local magistrate, who issued a warrant for Plaintiff's arrest on March 30, 2012. After the warrant was issued, Duncan went to Plaintiff's residence to inform Plaintiff of the warrant. Duncan claims Plaintiff went with him willingly to the police station, while Plaintiff alleges that Duncan coerced Plaintiff into accompanying him there. While Duncan states that Plaintiff was only at the police station for two hours of questioning before being released on \$250 unsecured bond, Plaintiff claims that he was never informed of his Miranda rights prior to his questioning at the station, and was detained in deplorable and confined conditions for a prolonged period of time. The harassment charge against Plaintiff was ultimately *nolle prossed*.

Plaintiff's complaint alleges he suffered severe distress and damage to his reputation as a result of the arrest and detention, and raises a host of claims against the Defendants including false arrest, malicious prosecution, defamation, official misconduct, and wrongful imprisonment. On March 4, 2013 Defendants filed a Motion for Summary Judgment, supported by affidavits of both Dunning and Duncan. Plaintiff filed a memorandum in opposition to the motion on March 18, 2013 supported by affidavits of Plaintiff and Plaintiff's wife. Plaintiff argued that Robinson violated the no-contact order Plaintiff had obtained against him, and that the Defendants should have enforced the no-contact order, rather than arrest Plaintiff. By Order dated June 27, 2013 this Court granted Defendants' Motion for Summary Judgment. In construing Plaintiff's pleadings, this Court found that the legal bases for Plaintiff's claims were either 42 U.S.C. § 1983 or, in the alternative, the Delaware

<sup>&</sup>lt;sup>1</sup> Strong v. Dunning, 2013 WL 3481452, at \*7 (Del. Super. Ct. June 27, 2013).

Earl Strong v. Dunning, et al. C.A. No. K12C-07-005 WLW October 4, 2013

County and Municipal Tort Claims Act<sup>2</sup> (hereinafter "the CMTCA").<sup>3</sup> The Court held that the Defendants were entitled to immunity under either statute, and that the claims alleged against Dunning and Duncan in their individual capacities failed substantively.<sup>4</sup> On July 5, 2013 Plaintiff timely filed the instant Motion for Reargument *pro se*.<sup>5</sup>

# Standard of Review

The standard for determining whether to grant a party's motion for reargument pursuant to Superior Court Civil Rule 59(e) is well settled under Delaware law.<sup>6</sup> The motion will be granted only if "the Court has overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision." A motion for reargument is not an

<sup>&</sup>lt;sup>2</sup> 10 Del. C. § 4010 et seq.

<sup>&</sup>lt;sup>3</sup> *Dunning*, 2013 WL 3481452, at \*2. The Court reached this conclusion based on its own interpretation of the pleadings; Plaintiff did not allege any statutory basis for his claims.

<sup>&</sup>lt;sup>4</sup> *Id.* at \*4-7.

<sup>&</sup>lt;sup>5</sup> Plaintiff has styled his motion as a "Motion for Trial and Objection to Granting Defendants [*sic*] Summary Judgment." Such a motion does not exist under the Superior Court Civil Rules. However, documents filed by *pro se* litigants are judged by a less stringent standard than those filed by attorneys, and will be construed as technically proper if it is feasible to do so. *See Johnson v. State*, 442 A.2d 1362, 1364 (Del. 1982). This Court finds that Plaintiff's motion is most properly construed as a motion for reargument pursuant to Del. Super. Ct. Civ. R. 59(e).

<sup>&</sup>lt;sup>6</sup> Langshaw v. Appleby Sys., Inc., 2006 WL 3026202, at \*1 (Del. Super. Ct. Oct. 20, 2006) (citing Kennedy v. Invacare Corp., 2006 WL 488590, at \*1 (Del. Super. Ct. Jan. 31, 2006)).

<sup>&</sup>lt;sup>7</sup> Kennedy, 2006 WL 488590, at \*1 (citing *Bd. of Managers of the Del. Criminal Justice Info. Sys. v. Gannett Co.*, 2003 WL 1579170, at \*1 (Del. Super. Ct. Jan. 17, 2003)).

opportunity for a party to rehash arguments already decided by the Court or to present new arguments not previously raised.<sup>8</sup>

#### **DISCUSSION**

Parties are barred from raising new arguments in a motion for reargument.<sup>9</sup> When a movant advances a new argument that was not previously asserted, and the movant had a prior opportunity to make that argument before the Court, that argument is inappropriate and the Court will not consider its merits.<sup>10</sup> Allowing otherwise would not promote efficient use of judicial resources and would result in prejudice to the non-moving party.<sup>11</sup>

Plaintiff raises two arguments in his Motion that he never raised in his pleadings nor in his response to Defendants' Motion for Summary Judgment. Plaintiff's first argument is that the Defendants presented the affidavit of Dunning filed in support of Defendants Motion for Summary Judgment in bad faith pursuant to Superior Court Civil Rule 56(g).<sup>12</sup> Specifically, Plaintiff challenges the existence of the convenience store surveillance tape and eye-witness corroboration which

<sup>&</sup>lt;sup>8</sup> *Id.*; *Hennegan v. Cardiology Consultants, P.A.*, 2008 WL 4152678, at \*1 (Del. Super. Ct. Sept. 9, 2009) (citing *Denison v. Redefer*, 2006 WL 1679580, at \*2 (Del. Super. Ct. Mar. 31, 2006)).

<sup>&</sup>lt;sup>9</sup> Plummer v. Sherman, 2004 WL 63414, at \*2 (Del. Super. Ct. Jan. 14, 2004) (citing Bd. Of Managers of the Del. Criminal Justice Info. Sys., 2003 WL 1579170, at \*3-4).

<sup>&</sup>lt;sup>10</sup> *Id.* at \*1-2 (citations omitted).

<sup>&</sup>lt;sup>11</sup> See id. at \*2.

<sup>&</sup>lt;sup>12</sup> Del. Super Ct. Civ. R. 56(g).

Dunning states in his affidavit he relied upon in seeking the arrest warrant. Yet Plaintiff makes no mention of this theory in his response to Defendants' Motion for Summary Judgment, and raises this argument for the first time in the instant motion. Plaintiff had ample opportunity to include this argument in his response to Defendants' Motion, or to file a motion to strike Dunning's affidavit. Plaintiff failed to do so. Accordingly, Plaintiff is barred from raising this argument for the first time in his Motion for Reargument.

Plaintiff's second argument is that his detention in confined conditions at the police station falls within the CMTCA's exception to municipal immunity for the negligent operation or maintenance of public buildings.<sup>13</sup> This is the first time Plaintiff has raised this argument: nowhere in his pleadings does Plaintiff cite any statutory basis for his claims, nor does Plaintiff claim that any exceptions to immunity under the CMTCA apply. Accordingly, Plaintiff is barred from making this argument as well.<sup>14</sup>

Plaintiff's remaining arguments simply rehash the same arguments he made in response to Defendants' Motion for Summary Judgment, and mainly focus on the existence of his no-contact order against Robinson and his argument that Dunning lacked probable cause to apply for the arrest warrant. Plaintiff offers no basis from

<sup>&</sup>lt;sup>13</sup> See 10 Del. C. § 4012(2).

<sup>&</sup>lt;sup>14</sup> It is worth noting that this Court already found the exceptions of § 4012 inapplicable and irrelevant to Plaintiff's case. *Strong v. Dunning*, 2013 WL 3481452, at \*3 (Del. Super. Ct. June 27, 2013).

Earl Strong v. Dunning, et al.

C.A. No. K12C-07-005 WLW

October 4, 2013

which to conclude this Court overlooked controlling precedent or legal principles, or

misapprehended the law or facts in such a way that would have changed the outcome

of Defendants' Motion for Summary Judgment.

**CONCLUSION** 

Based on the foregoing, Plaintiff's Motion for Reargument is **DENIED.** 

IT IS SO ORDERED.

/s/ William L. Witham, Jr.

Resident Judge

WLW/dmh

7